IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.712 OF 2005
WITH
CIVIL APPLICATION NO.997 OF 2004

Harishsingh Pansingh Kanari & Ors. ..Appellants.

V/s.

Govindsingh Pansingh Rawat. ..Respondent.

Appellant No.1 present in person.

CORAM: A.M.KHANWILKAR,J

DATE : JANUARY 20, 2006.

P.C. :

1. Today when the matter is called out, Mr Harish Appellant No.1 appears in person. He prays that hearing of the appeal be deferred on the ground that his advocate on record is in difficulty. Ordinarily, there would have been no reason to reject this request but in the present case, it is seen that the matter has been adjourned on this ground several times. That fact has been recorded in the order passed by Justice Marlapalle dated October 17, 2005 which reads thus :

> ". This appeal had come up for admission initially on 2/8/2005 and none was present for the appellants on that date. On all subsequent dates it was the same position and on 14/10/2005 the appellant no.1 appeared in person and stated that their advocate was not well and, therefore, by way of last chance the appeal was directed to be taken up for admission today. Today the appellant no.1 is

> present and he has placed on record an application seeking for adjournment as his advocate is unwell. During last more than 2 months the appellants have not been taking steps to argue the appeal for admission and it appears that they are themselves not keen to go ahead with the appeal.
>
> . Hence stand over after Christmas Vacation."

2. Matter was thereafter, shown in the list on 9th January, 2006 and came to be adjourned for today i.e. 20th January, 2006. In this backdrop, the excuse given by the appellant for adjournment cannot be said to be sufficient cause. The same is unacceptable. No further indulgence can be shown to the appellants. Request of adjournment on the ground of difficulty of advocate on record is therefore, rejected.

3. The appellant No.1 was given option that he may argue the case himself. He declined to avail of that opportunity. In the circumstances, on the basis of materials on record, I have proceeded to decide this appeal on merits.

4. The court below has partly allowed the Notice of Motion by appointing court receiver for taking possession of the ground floor of the suit premises

and appointed the plaintiff as agent and the plaintiff to pay expenses of the court receiver. The Notice of Motion filed by the appellant/defendant has however, been dismissed on the finding reached by the court below that there is no evidence on record to even remotely suggest that defendant No.1 was tenant of Ratan Maya or owner of the suit premises. It is also found that the Defendant No.1 was residing in Ratan Chawl No.15. As per findings of the trial court, the defendant No.1 has failed to produce any documentary evidence to show that he was in lawful possession of the ground floor of the suit premises and has right to retain the possession thereof in his own right. It is in this backdrop the court below proceeded to pass the impugned order in respect of the disputed property. The order in question being interlocutory order passed on the findings reached on the basis of material on record, and there being no reason to depart from the said conclusion, as no material is produced before me to overturn the said findings, there is no merit in this appeal. Hence, dismissed.

5. In view of this order, civil application is also dismissed.